

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Garcia-Rodenas et al.
Appl. No.: 10/562,243
Conf. No.: 6067
Filed: December 22, 2005
Title: NUTRITIONAL FORMULA FOR OPTIMAL GUT BARRIER
Art Unit: 1645
Examiner: B. Gangle
Docket No.: 3712036-00694

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION TO REVIVE UNDER 37 CFR 1.137(b)

Dear Examiner:

Pursuant to 37 CFR 1.137(b), the Applicant, through his undersigned attorney, hereby submits this Petition to Revive the above-referenced patent application in view of the Notice of Improper Request for Continued Examination dated October 27, 2009 (actually sent on October 26, 2009). A copy of the Notice of Improper Request for Continued Examination is attached hereto at Exhibit A.

Applicant hereby states that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

The Response to Office Action dated April 17, 2009 is submitted herewith.

In accordance with the Manual for Patent Examining Procedure ("MPEP") Section 711.02 and 37 CFR 1.137(b), this Petition includes:

1. Petition to Revive Under 37 CFR 1.137 (b) (Exhibit A);
2. The Notice of Improper Request for Continued Examination (Exhibit B);
3. The Response to the Final Office Action mailed April 17, 2009 (Exhibit C);

4. A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional (see above); and
5. The petition fee as set forth in 37 CFR 1.17(m) (authorization below).

Please note that this Petition does not include a Terminal Disclaimer under 37 CFR 1.137(d) because the present application is not (1) a design application, (2) a utility application filed before June 8, 1995, or (3) a plant application filed before June 8, 1995.

The Director is authorized to charge \$1,620.00 for the Petition to Revive (unintentional) fee pursuant to 37 CFR 1.17(m) and any additional fees which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 3712036-00694 on the account statement.

Respectfully submitted,

K&L GATES LLP

BY 

Robert M. Barrett
Reg. No. 30,142
Customer No. 29157
312-807-4441

Dated: October 27, 2009

EXHIBIT A

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)****Docket Number (Optional)**
3712036-00694First named inventor: Garcia-Rodenas et al.Application No.: 10/562,243Art Unit: 1645Filed: December 22, 2005Examiner: B. GangleTitle: NUTRITIONAL FORMULA FOR OPTIMAL GUT BARRIER

Attention: Office of Petitions

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions
Information at (571) 272-3282.The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the
United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set
for reply in the office notice or action plus any extensions of time actually obtained.**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed
before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional

1. Petition Fee

- ☐ Small entity-fee \$ _____ (37 CFR 1.17(m)). Application claims small entity status. See 37 CFR 1.27.
- ☒ Other than small entity-fee \$ 1620.00 (37 CFR 1.17(m))

2. Reply and/or fee

- A. The reply and/or fee to the above-noted Office action in
the form of Response to Final Office Action (identify type of reply):

- ☐ has been filed previously on _____.
- ☒ is enclosed herewith.

- B. The issue fee and publication fee (if applicable) of \$ _____.

- ☐ has been paid previously on _____.
- ☐ is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number

3. Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioners/applicants is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

Signature
Robert M. Barrett

Type or Printed name
P.O. Box 1135

Address
Chicago, Illinois 60690-1135

Address

October 27, 2009

Date
30,142

Registration Number, if applicable
312-807-4204

Telephone Number

- Enclosures:
- ☒ Fee Payment
- ☒ Reply
- ☐ Terminal Disclaimer Form
- ☐ Additional sheets containing statements establishing unintentional delay
- ☒ Other: Exhibits A-C

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

- ☐ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.
- ☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

Date

Signature

Typed or printed name of person signing certificate

EXHIBIT B




UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

29157 c 10/27/2009

K&L Gates LLP
P.O. Box 1135
CHICAGO, IL 60690

Paper No.

Application No.:	10/562,243 	Date Mailed:	10/27/2009
First Named Inventor:	Garcia-Rodenas, Clara, Lucia	Examiner:	GANGLE, BRIAN J
Attorney Docket No.:	112701-694	Art Unit:	1645
Confirmation No.:	6067	Filing Date:	12/22/2005

Please find attached an Office communication concerning this application or proceeding.

RECEIVED
K&L GATES LLP
INTELLECTUAL PROPERTY DOCKET

00123209
ATTY: WMB-BAL
DOCKET #: 3718036-
694

Commissioner for Patents

**NOTICE OF IMPROPER REQUEST FOR
CONTINUED EXAMINATION (RCE)**

Application No.
10/562,243

Applicant(s)
GARCIA-RODENAS ET AL.

Art Unit
1624

Date Mailed:

The request for continued examination (RCE) under 37 CFR 1.114 filed on 19 October, 2009 is improper for reason(s) indicated below:

1. ☐ Continued examination under 37 CFR 1.114 does not apply to an application for a design patent. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b) or a CPA under 37 CFR 1.53(d). An RCE cannot be treated as a CPA.
2. ☐ Continued examination under 37 CFR 1.114 does not apply to an application that was filed before June 8, 1995. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b).
3. ☐ Continued examination under 37 CFR 1.114 does not apply to an application unless prosecution in the application is closed. If the RCE was accompanied by a reply to a non-final Office action, the reply will be entered and considered under 37 CFR 1.111. If the RCE was not accompanied by a reply, the time period set forth in the last Office action continues to run from the mailing date of that action.
4. ☐ The request was not filed before payment of the issue fee, and no petition under 37 CFR 1.313 was granted. If this application has not yet issued as a patent, applicant may wish to consider filing either a petition under 37 CFR 1.313 to withdraw this application from issue, or a continuing application under 37 CFR 1.53(b).
5. ☐ The request was not filed before abandonment of the application. The application was abandoned, or proceedings terminated on _____. Applicant may wish to consider filing a petition under 37 CFR 1.137 to revive this abandoned application.
6. ☐ The request was not accompanied by the fee set forth in 37 CFR 1.17(e) as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.
7. ☒ The request was not accompanied by a submission as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.

Note: A continued prosecution application (CPA) under 37 CFR 1.53(d) cannot be filed in a utility or plant application. A CPA filed in a utility or plant application that has a filing date **on or after June 8, 1995** will be treated as an RCE under 37 CFR 1.114. The request for a CPA in the instant application, however, has been treated as an improper RCE for the reason(s) indicated above.

A copy of this Notice MUST be returned with the reply.

Direct any questions concerning this notice to

/PAUL M. STANBACK/, Technology Center 1600

Telephone Number: 571-272-0675

EXHIBIT C